**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN**
**AT JODHPUR**
**::::**

**O R D E R**

**Shiv Kumar Sharma**
**vs**
**Registrar, Rajasthan Agricultural University, Bikaner & Ors.**

**S.B. CIVIL WRIT PETITION NO.1354/1999 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.**

DATE OF ORDER : **5th Sept, 2006**

**PRESENT**

**HON'BLE MR.MOHAMMAD RAFIQ,J.**

Mr.P.S. Bhati, Advocate for the petitioner.
Mr. M.S. Singhvi, Advocate for the respondents.

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**BY THE COURT**: -

The petitioner Shiv Kumar Sharma in the present writ petition has challenged the order dated 8.8.1997 as amended by order dated 12.8.1997 and then again amended by order dated 5/9.1.1997 and the order dated 31.10/3.11.1998 and as a result of eventually quashment of all these orders, has prayed for

declaration about his continuity in services of the respondents with all consequential benefits.

Facts in brief are that the petitioner was appointed on the post of Lower Divisional Clerk in the services of the respondent-University in July, 1975 and was later promoted as Upper Divisional Clerk in the year 1992. The petitioner was responsible for maintaining provident fund accounts of the employees of the respondent-University. One Shri D.D. Gaur who was working as Dy. Comptroller conducted audit of the P.F. Accounts. According to the petitioner, audit of such accounts was already made by Shri A.L. Audhichi, Section Officer in the year 1998 who reported that there was nothing objectionable in the accounts. However, according to the petitioner the very same Shri. A.L. Audhichi under the pressure of Shri. D.D. Gaur in his new report concluded that there were mis-appropriation in the provident fund accounts. The petitioner was thereafter placed under suspension and yet no subsistence allowance was paid to him. He thereupon preferred a writ petition being S.B. Civil Writ Petition No.2942/1995 before this Court and only thereafter, the respondents started making payment of subsistence allowance. Though a period of one and

half year elapsed after placing the petitioner under suspension he was not still served with the charge sheet. He then submitted a representation dated 12.5.1994. The Registrar of the respondent University on 27.2.1996 issued a charge-sheet alongwith memorandum of allegations which was served upon the petitioner on 12.3.1996. The petitioner represented to the authorities on 22.3.1996 and thereafter on 3rd April, 1997 for supply of documents. In these representations,he also submitted that he was not responsible for maintenance of the accounts of the PF and other accounts of the University. The respondents have adopted the method of pick and choose against the petitioner alone while completely letting off other erring employees. He reiterated his request for supply of documents on 19.7.1996 and thereafter on 12.7.1996, but despite repeated requests he has not been provided with the said documents. In these circumstances he was compelled to file his reply on 20.6.1996 in which he denied the charges. The disciplinary authority appointed the inquiry officer and Shri A.L. Audhichi was appointed as Presenting Officer who had submitted two contradictory audit reports, one in the year 1989 and second in 1994. The petitioner has alleged that he was not provided with proper opportunity to defend himself and the inquiry

against him was conducted in a piece meal manner. During the inquiry, the petitioner was denied the right to be represented by his defence assistant inasmuch as he was prejudiced in properly defending his case because he was not well versed with the procedure of inquiry. In the circumstances, the petitioner again submitted representation on 16.10.1996 and thereafter on 25.10.1996 raising his grievance. The inquiry officer however submitted his report on 7.1.1997. When the petitioner was required to submit his representation against the inquiry, the disciplinary authority did not apply his mind to the same and finally dismissed the petitioner vide order dated 8.8.1997. The petitioner submitted an appeal against the order of his dismissal in which he pointed out that under Disciplinary and Appeal Rules of the University there was no penalty like dismissal. The Registrar of the University thereafter issued a corrigendum on 5/9.11.1997 thereby substituting the word 'removal' for 'dismissal'. Yet another corrigendum was issued on 12.8.1997 in which the date of the meeting of the Board of Management,which was earlier mentioned in the order dated 8.8.1997 as 4.12.1987 was corrected to 4.12.1997. Aggrieved of the aforesaid order of penalty, the petitioner preferred appeal to the Board of Management of the

University on 30.8.1997. The Board of Management appointed sub-committee of its three members to examine the case and submits report. The Board thereafter finally by its order dated 31.8.1999 partly accepted the appeal while modifying the order of penalty of removal into that of compulsory retirement of the petitioner from the service of the University w.e.f. 8.8.1997, the date on which the original order of penalty was passed. Hence, this writ petition.

Shri P.S.Bhati, learned counsel for the petitioner has argued that the petitioner was not afforded reasonable opportunity to defend himself inasmuch as he was denied the right of taking defence assistant whereas the department had appointed Shri A.L. Audhichi as Presenting Officer who was not well known in the accounting rules and the procedure. In spite of the repeated requests of the petitioner, he was not provided with the documents regarding audit objection and such documents at the same time, made available to the inquiry officer. The inquiry officer accepted these documents as proved even without any witnesses having been examined to prove them. The petitioner was not afforded an opportunity to cross-examine the witnesses

produced by the University. During entire inquiry proceedings, the University authorities were not at all certain as to what procedure was to be adopted in conducting the inquiry. While at one stage, the provisions contained in Service Conditions of Employees (Other than Teachers and Officers) as prescribed in the Act of 1976 were adopted, at the other stage, the respondents applied provisions contained in Rajasthan Civil Services (C.C.A.) Rules, 1958 while imposing penalty. At yet another stage, the regulations pertaining to Sukhadiya University have been followed. The inquiry report is therefore perfectly illegal. The explanations given by the petitioner has not been objectively considered by the disciplinary authority. The disciplinary authority has not applied its mind to the inquiry report and the other record and solely relied upon the report of Shri. D.D.Gaur who was biased against the petitioner. Shri P.S. Bhati, learned counsel for the petitioner apart from the inquiry report, order of disciplinary authority and the order of the appellate authority has also referred to summary of all the charges and findings recorded thereupon by the inquiry officer which has has placed on record as Schedule A. With the help of this schedule, Shri Bhati explained that number of charges have not been found proved solely against the petitioner inasmuch

as inquiry report with respect to embezzlement has also not been found proved. The finding recorded on all the charges merely suggest that there was only procedural irregularity in the maintenance of the account for which apart from the petitioner, the dealing assistant Section Officer Asstt. Accounts Officer and other officers have also been found responsible for such procedural lapses.

Lastly, Shri Bhati has aruged that even though the penalty of removal of the petitioner was converted into compulsory retirement by the appellate authority way back on 31.10/3.11.1998, but the respondents have so far not paid terminal dues and the pensionary benefits of the petitioner and it has been a grave difficulty for the petitioner for surviving and, therefore, he alternatively prayed that in the event of writ petition not been allowed, the respondents authorities may be directed to pay his terminal benefits and the arrears of the pension and continue to pay him pension as per the rules.

On the other hand, Shri M.S. Singhvi, learned counsel for the respondent has while supporting the order of penalty and order of

the appellate court argued that the disciplinary proceedings were initiated against the petitioner on the charges and the audit party in a confidential report submitted in the year 1994 reported that there were serious irregularities in maintaining the PF Accounts at sub-treasury level. He has denied that audit was conducted on account of any alleged bias on the part of Shri. D.D. Gaur. It has also been denied that the alleged audit report was made by Shri. A.L. Audhichi. He has referred to various instances which according to the respondents amounted to misconduct. He has also denied that the petitioner has not been afforded reasonable opportunity to defend himself. On the contrary, he submits that the inquiry was conducted strictly in keeping with the principles of natural justice and the petitioner was afforded reasonable opportunity to defend himself. He has denied that any discrimination was meted out to the petitioner. In fact, other delinquent officials namely Shri S.K. Chaturvedi, Shri M.C. Dixit and Shri B.L. Bhati were also served with the charge-sheets. The petitioner was allowed to inspect the record and take photocopies of the documents and he was given full opportunity to defend himself. He has argued that the appellate authority has also taken a lenient view in the case of the petitioner by converting the

penalty of removal into that of compulsory retirement. He has thus argued that the writ petition filed by the petitioner deserves to be dismissed with costs.

I have with the help of the learned counsel for the parties scanned the entire record. I have also examined the findings recorded on each of the charges including the instances of irregularities. It does appear from a bare perusal thereof that other officers such as Dealing Asstt. Second Officer, Asstt. Accounts Officer and other officers have also been found responsible for not adhering to the rules and procedure for maintaining the account of the provident fund. In respect of some of the instances more amount has been found to be paid to the employee than what was due to them. In respect of certain entries in the cash books, cash books were mostly not found to have been completed. There were lot of over writings and interpolations in the account books according to the findings recorded by the inquiry officer. The argument of discrimination raised by the petitioner cannot be sustained in view of the fact that other officials who were also found responsible, disciplinary proceedings against them too have been initiated by the respondent University.

This argument is therefore liable to be rejected. In the light of the stand taken by the University that the petitioner has been afforded full opportunity to defend himself and was allowed to not only inspect the documents but also to take their photocopies, argument with regard to violation of principles of natural justice cannot be applied. Allegation of bias against respondent no.3 cannot be accepted just because he audited the P.F. Accounts. The appellate authority while applying its mind to gravity of charge rightly converted the penalty of removal into compulsory retirement. I do not therefore find any error in the orders of penalty and also the appellate court deciding the appeal of the petitioner.

This now takes me to the question as to if the action of the respondents in not paying the retiral dues and pensionary benefits to the petitioner can be justified in law. Even if the petitioner was compulsorily retired from service, he was still entitled to such benefits which were admissible to an employee retired compulsorily. Learned counsel for the respondents could not justify non-payment of such benefits to the petitioner nor could not cite any such rule denying the same to those retired compulsorily. It is

indeed a matter of surprise that inspite of having compulsorily retired the petitioner w.e.f. 8.8.1997, the respondents have not so far taken care to make payment of his retrial/pensionary dues. Pendency of the present writ petition could hardly afford any reason to the respondents to withhold payment of all these benefits to the petitioner.

In the result the writ petition is partly allowed. While the order of penalty as modified by order of appellate authority into compulsory retirement is upheld, the respondents are directed to make payment of all retiral dues including pension and arrears thereof to the petitioner alongwith interest @ 6% per annum on such amount within a period of three months from the date of receipt a copy of this order and are further directed to continue to pay such pension on regular basis. There shall be no order as to costs.

**(MOHAMMAD RAFIQ), J.**

c.p.goyal/-